

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

**B.P., H.A., and S.H. individually, and
On behalf of all others similarly situated,**

Plaintiffs,

v.

No: 2:23-cv-00071-TRM-JEM

CITY OF JOHNSON CITY, TENNESSEE, et al.,

Defendants.

_____ /

**REPLY IN SUPPORT OF PLAINTIFFS’
MOTION FOR A PROTECTIVE ORDER**

Defendant Peters makes a series of scattershot arguments in his opposition (ECF 165, “Opp.”) to Plaintiffs’ motion (ECF 158, “Mot.”). For the sake of organization and brevity, Plaintiffs number each argument and address it point-by-point.

ARGUMENT

1. The Joint Protective Order governing the disclosure of information in the litigation obviates the need for an order to govern discovery of unnamed class members. Opp. at 1.

Not so. Plaintiffs are seeking an order requiring Peters, or any other Defendant, to obtain leave of Court (or consent from Plaintiffs) prior to seeking discovery from unnamed class members. Permitting reasonable discovery of unnamed class members, while also protecting them from potential harassment and undue burden, is well within the Court’s discretion, and provides a fundamentally different safeguard than the confidentiality provisions of the Joint Protective Order.

2. The subpoenas are proper because the target individuals were named plaintiffs at the time Peters issued the subpoenas. Opp. at 2 (“At the time the subpoenas were issued and service accepted...they were each named Plaintiffs”).

Oddly, Peters is raising an issue that Plaintiffs had not: analyzed at the moment of service, the subpoenas were improper because Rule 45 only authorizes discovery on non-parties. While that gives the Court an independent basis to quash the subpoenas, Peters would simply serve the same objectionable subpoenas on the same individuals, who are now certainly non-parties. And Peters, or another defendant, will presumably subpoena any other unnamed class members whose identities become known, and disputes will continue to arise. The protective order Plaintiffs request would serve a far more efficient gatekeeping function.

3. “By suing these Defendants...subpoenaed individuals certainly cannot claim ‘annoyance, embarrassment, oppression, or undue burden or expense’ from having to provide routine discovery as to their claims.” Opp. at 2-3. The discovery sought “is neither oppressive nor unusual.” *Id.* at 4.

Plaintiffs’ harassment and burden arguments are set forth in their Motion. ECF 158 at 2, 5-6. Additionally, the protective order is intended to cover all unnamed class members (not just the subpoenaed individuals who were previously named plaintiffs).

4. The subpoena requests are relevant to statutes of limitation.

Plaintiffs’ arguments against this assertion are set forth in their Opposition to Defendant Peters’ Second Motion to Compel (ECF 114 at 5).

5. Plaintiffs have not met their “good cause” burden under Rule 26(c).

Plaintiffs’ demonstration of “good cause” is set forth in their Motion. ECF 158 at 2, 5-6.

6. **“How can the Court possibly allow Plaintiffs to call these individuals as witnesses at trial to support their claims and simultaneously deny discovery from them as Plaintiffs insist?”** Opp. at 10 (bolded in original).

Plaintiffs’ Opposition to Peters’ Third Motion to Compel, Section II, “Plaintiffs Are Fulfilling Their Discovery Obligations” sets forth the search and production efforts made in response to all but 6 of the 43 subpoena requests. The targets have substantially complied with the subpoena, and the requested protective order would still permit discovery of unnamed class members, just with reasonable limitations on frequency and extent as authorized under Rule 26(c).

CONCLUSION

Based on the above, Plaintiffs respectfully request that the Court enter an order requiring that all Defendants obtain leave of Court (or consent from Plaintiffs) prior to seeking discovery from unnamed class members.

Dated AprilApril 30, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing has been filed and served via the court's electronic filing system on April 30, 2024 to counsel of record:

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